

DAVID M. MICHAEL, CSBN 74031
EDWARD M. BURCH, CSBN 255470
Law Offices of David M. Michael
One Sansome Street, Suite 3500
San Francisco, CA 94104
Telephone: (415) 946-8996

JOE D. BUSTOS
400 E 20th Street
Cheyenne, WY 82001
Telephone: (307) 638-4633

Attorneys for Defendant
SCOTT MICHAEL LEWIS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

v.

One Cessna Airplane, Model Number
TU-206, bearing Tail Number N6214V
and Serial Number U206-1189, and
\$259,717 United States Currency,

Defendants,

SCOTT MICHAEL LEWIS,

Claimant.

Civil Case No.: 2:14-cv-00151-ABJ

**DECLARATION OF COUNSEL IN SUPPORT OF CLAIMANT'S REPLY RE
[RENEWED] MOTION TO SUPPRESS and/or TO QUASH SEARCH WARRANT
PURSUANT TO THE FOURTH AMENDMENT and/or SUPP. RULE G(8)(a) and
REQUEST FOR EVIDENTIARY HEARING**

I, David M. Michael, declare as follows:

1. I have personal knowledge of the facts hereinafter stated, except where otherwise indicated, and if called upon to testify, I could and would competently testify thereto.

2. I am an attorney at law and represent Claimant (“Mr. Lewis”) in the above-entitled action, and have been so since the inception of this civil forfeiture case.

3. I have reviewed the docket and documents in the record in Mr. Lewis’s criminal case, no. 16-CR-19, specifically regarding Mr. Lewis’s motion to suppress which was heard in April 2016 in this Court.

4. I am aware that the defense in Mr. Lewis’s criminal case did not call any expert witnesses to testify on his behalf at the hearing on Mr. Lewis’s motion to suppress in that case as to any issue (see 2:16-cr-00019-ABJ Document 53), and believe that the defense, at that time, had access to only the certification documents regarding the alleged drug odor detecting dog, Zeke, and his handler, Officer McClain, who were the focus of that hearing. I have acquired through discovery in this case, not only certification records, but also training records and field deployment records of Zeke and his Handler.

5. I have consulted with Andy Falco of Falco K9 Academy, Orange County, CA, in the course of my practice, and have retained Mr. Falco in other cases. Mr. Falco is a nationally known Dog Trainer and a qualified expert witness regarding the certification, training and field deployment of detection dogs. His CV, Bio and Webpage are attached as Exhibit A.

6. If granted an evidentiary hearing on Mr. Lewis’s renewed motion to suppress in this case, I would retain Mr. Falco for the purposes of undermining the drug dog team utilized by the government here. Mr. Falco will render his opinion based on the certification documents, training records, and field deployment records of the drug dog, Zeke, and his handler, Officer McClain, as to double blind training, extinction training, cueing, proofing, and improper deployment, and that the dog team’s records coupled with the fact records regarding the deployment in this particular case will ultimately lead Mr. Falco to conclude based on his

expertise that the training and deployment of the dog was so inadequate and improper that his deployment on the date at issue in this case did not constitute an alert by a property trained and certified detection dog and that any alleged alert did not and could not provide probable cause to search.

6. If granted an evidentiary hearing regarding Mr. Lewis's renewed motion to suppress in this case, I would also retain as an expert, Dick Bevington ((303) 823-5305), an aviation expert from Colorado (Master CFI, lieutenant colonel in the Air Force for 25 years, captain for United Airlines for 32 years, over 50 years flying experience) to support Mr. Lewis's positions in said motion. Specifically, the search of Mr. Lewis's hotel room is based largely on the opinion of an employee of Choice Aviation at Yellowstone Regional Airport in Cody, Wyoming that there were a number of unusual and thus suspicious factors or characteristics about the plane carrying Mr. Lewis, its occupant/s and their communications with the airport in November of 2014 and on February 27, 2015, just before the search of Mr. Lewis's hotel room. *See* Case 2:16-cr-00019-ABJ, Document 68, Filed 04/13/16, Order Denying Defendant's Motions at page 5). I believe Mr. Bevington will testify to the effect that there was nothing unusual or suspicious about Mr. Lewis or the plane, or their travel, on the days in question and that any conduct of Mr. Lewis and the other occupant on the plane was never in violation of any federal regulation or procedure and such conduct is consistent with the daily conduct of thousands of private pilots who fly with a license issued by the FAA. Mr. Bevington will also testify that the alleged indicators of alleged suspicions behavior by the government aviation expert, show conduct that is neither suspicions nor in violation of any federal regulation or procedure (other than flying VFR in IFR conditions) and that such conduct is consistent with the daily conduct of thousands of private pilots who fly with a license issued by the FAA. It should

be noted, in that regards, that the aviation expert presented by the government seems to lack even a basic private pilot's license to fly an airplane.

7. With regard to these two experts, I intend to provide full information as to identity, summary of opinions, the bases and reasons for those opinions, and the witness's qualifications that would satisfy the notice requirements of Federal Rules of Criminal Procedure, Rule 16 (b)(1)(c), if and when such information is required to be produced by this Court prior to the evidentiary hearing held to decide Mr. Lewis's pending renewed motion to suppress. Furthermore, I intend to produce the two expert witnesses identified here at the hearing on the motion to suppress in order testify and be subject to cross examination by the government.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on 23 September 2016 at San Francisco, California.

/s/David M. Michael
DAVID M. MICHAEL
Declarant and attorney for Claimant
SCOTT MICHAEL LEWIS

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that, on 23 September 2016, I caused to be electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/David M. Michael
DAVID M. MICHAEL

Exhibit A

Andre Falco Jimenez
CV

EMPLOYMENT HISTORY

1983-1986	Reserve Police Officer, Anaheim Police Department
1986-2005	Police Officer, Anaheim Police Department
1992-1993	Instructor - Golden West College, Basic Academy
1992-2004	Instructor - Orange County Sheriff Department, Basic Academy
1992-1997	K-9 Team Trainer for the Anaheim Police Department
1995-1997	Instructor - <i>Work Dogs International</i>
1994-2005	Instructor - Anaheim Police Department's P.A.C.E. Program
1995-2004	Instructor - <i>K9 Academy for Law Enforcement</i>
1997-2000	Contributing Editor- <i>Dog Sports Magazine</i>
1995-Present	Owner/President of <i>Falco K9 Academy (Falco Enterprises, Inc)</i>
2001-Present	TASA expert for Detection Dogs, Police K9's and civilian dogs
2007-2012	Director, Jake's Dog Foundation
2011-2012	President of Falco K9 Security, Services and Investigations Inc

ASSIGNMENTS

1984-1987	Reserve Police Officer
1987-1989	Patrol Officer
1989-1996	Canine Officer
1999-2005	Patrol Officer
1991-1996	Anaheim Police S.W.A.T. Canine Team
1996-1999	SVU Detective (Family Crimes and Sex Crimes)

Author

Dog Sniff Evidence (**Number 1 Bestseller**)
Falco-Walking with God and Dog (ISBN)
8-Week Basic Handler Manual (ISBN)
Modern Decoying for the Patrol Dog
Detection Dog Manual

INSTRUCTOR, K9 CONFERENCES AND SEMINARS

Anaheim, California - Spring 1996
Orlando, Florida - Fall 1996
Ventura, California - April 1997
Houston, Texas - May 1997
Orlando, Florida - December 1997
San Jose, CA - May 1998
New London, Connecticut - October 1998
Ventura, California - June 1999
Tavares, Florida - March 2000
Boulder, Colorado - May 2000
Sacramento, California - October 2000
Houston, TX - January 2001
Lake County, Florida - March 2001
Portsmouth, New Hampshire - September 2001
Lake County, Florida - March 2002
New London, Connecticut - September 2002

Anaheim, California - September 2002
Lake County, Florida - April 2003
Phoenix, Arizona - October 2003
Lake County, Florida - March 2004
Phoenix, Arizona - September 2004
North Las Vegas, Nevada – October 2005
Utah State Police Officer Conference, Cedar City – 2006
Oregon Lawyers Association, Drugs and Searches Seminar September 2006
2007 - North Carolina Academy of Trial Lawyers, Meth 101– Defending a Meth Case
2008 Las Vegas Seminar on Detection Dogs – Planet Hollywood
2009 NACDL – Las Vegas, Nevada
NACDL –Portland, Oregon
NACDL – North Carolina
2010 Oregon Lawyers Association, Drugs and Searches Seminar November
NACDL Las Vegas
NACDL Houston, Texas
2011 Las Vegas Seminar on Bed Bug Detection Dogs – Orkin – the Golden Nugget
Oregon Lawyers Association, Drugs and Searches Seminar-November-Portland
2012 NACDL – Las Vegas
NACDL – Portland, Oregon
NACDL – Sun Valley, Idaho
National Press Corp/US Supreme Court, Washington DC Narcotics Detection
2013 Northern California German Shepherd Rescue – “Aggression and Training with
Love and Respect”
2014 NACDL – Aspen, Colorado
2014 NACDL – Las Vegas, Nevada

CERTIFICATES

California Police Officer’s Standards and Training - Reserve Police Officer
California Police Officer’s Standards and Training - Basic
California Police Officer’s Standards and Training - Intermediate
California Police Officer’s Standards and Training - Advanced
California Police Officer’s Standards and Training - Police Canine Evaluator
San Jose State University - Homicide Investigation
Academy of Justice, Riverside, California - Advanced Canine Handler
Arizona Law Enforcement Canine Association, Inc. - Police Dog Civil Litigation
Arizona Law Enforcement Canine Association, Inc. - Criminal Psychological Profiles
Work Dogs International - Advanced Police Dog Agitation (200 hours)
Orange County Police Canine Association - SWAT Dog Deployments
Orange County Police Canine Association - Police Dog Civil Litigation
Orange County Police Canine Association - Tracking and Trailing
Orange County Police Canine Association - Canine Psychology
Chapman University - Criminal Investigation
Department of Justice - Dignitary Security

COURT RECOGNIZED K9 EXPERT

2014 – USA v Davis (Nevada) - Suppression hearing scheduled
2014 - Nevada v. Keith Milian - Suppression hearing testimony
2014 - State of Kansas V Rocco Possemato - Suppression Hearing testimony
2014 - State of Kansas V Sean Possemato - Suppression Hearing testimony
2013 – Allen vs Oregon – Case Consult dog sniff good suggest plea
2013 – Rustad vs Loma Linda University - Deposition
2013 – Marcellus Ramon vs State of Oregon – Case consult, written report prepared
2013 – USA vs Scott Knippelmeir – Suppression hearing
2013 – Oregon vs French – Suppression hearing canceled plea negotiated
2013 – Oregon vs Lawson – Suppression Hearing pending
2013 – Iowa vs Timothy Nebel – Suppression hearing scheduled – plea agreement
2013 – Chad Hillyer vs State of Illinois – Suppression Hearing
2013 – Robert Capppiello vs State of California – Opinion given- plea agreement
2013 – Brian Barrett vs State of California – Opinion given – suppression hearing
2013 – Utah vs Colman – Verbal report given - Plea recommended
2013 – South Dakota vs Paul Miller – Opinion given – unknown outcome
2012 – Arizona vs Jose Cruz – Suppression hearing testimony
2012 – USA vs Woodcock – Opinion given - Plea agreement
2012 – Tezona vs State of California – Opinion given plea suggested
2012 – Ohio vs Mendo Love – Trial testimony
2012 – USA vs Wilson – Opinion given and plea suggested
2012 - USA vs Keller – Affidavit created – unknown final outcome
2012 – USA vs Aispuro-Haros – Trial testimony
2012 – John Davis vs Ohio – Jury trial testimony given
2011 – James Black vs Lindenwold Township, NJ – Lengthy case with multiple reports given – Case settled
2011 – State of Maryland vs Taylor-Williams Ryan J – Opinion given plea suggested
2010 – State of Illinois vs Elizabeth D Loveless
2010 – State of Maryland vs Wilson Timothy McCoy
2009 – State of California vs Michael Espalin
2008 – Vannessa Hargis v. Contra Costa, CA
2006 - Arizona vs Randal Harrell
2005 – Gerard Falzo, ET AL. V. County of Essex, ET AL.
2004 – Porras (Rincon) vs City of Fontana
2004 – Frank Robles v. City of Fontana
2004 – T. Vanetik v. Chapman Animal Hospital
2004 – Helen Deir v. City of Southgate
2003 – Williamson v. Barnes
2003 – Jimenez v. Thomas (unrelated) – Suppression hearing
2003 – State of Nevada v. M. Van Winkle
2003 – Puree v. La Pietra
2003 – United States v. A. Sanchez
2002 – J. Craig v. City of South Lake Tahoe
2002 – State of Wyoming v. J. Arlynn
2002 – State v. C. Wilkening
2001 – Cannon v. Rosagno

Memberships

North American Police Working Dog Association (NAPWDA)
National Police K9 Association (Individual)
National Police K9 Association (Company)
World Detector Dog Organization (Certified Instructor)
Anaheim Police Officer's Association
Orange County Police Canine Association (Former President)
National Tactical Officer's Association
American Society for Industrial Security
Friends of the Anaheim Police K9 Unit
United States Police Canine Association
California Narcotics Canine Association

AWARDS AND CITATIONS

Received the Anaheim Police Departments – Career Achievement Award
Certificate of Recognition from the California State Assembly
City of Anaheim Citation - "Outstanding performance at K-9 Competitions"
Operations Division, "Officer of the Year."
Division Commander Commendation - "Canine Charity Fund Raiser"
Division Commander Commendation - "Community Service"
Division Commander Commendation - "Homicide Investigation"
Operation Division, "Officer Of the Month" for December 1995.

SPECIAL PROJECTS

- Developed the canine unit's, "Commercial Building Training Program."
- Anaheim Police Canine team equipment studies.
- Researched and located a new contract trainer for the Anaheim canine team.
- Produced and directed three charity benefit shows for the *Orange County Police Canine Association*. Raising over \$150,000.00.
- President of the *Orange County Police Canine Association*.
- Certified by P.O.S.T. as a state police canine evaluator.
- Disney G.O.A.L.S. - Teach and coach the disadvantaged children of the Jeffrey/Lynne, Ponderosa Park and Guinida areas in the city of Anaheim.
- Traveled to Europe to study canine training. While there, I also tested and selected work dogs for five agencies. Including Anaheim PD.
- Coordinator for the *1996 International Police Canine Conference*.
- Invented and improved on police and police canine equipment for training and on the job.
- Developing an "E-coli" Detection Dog for the State of California (In progress 2008).

Andy Falco Jimenez

Bio

Synopsis:

Andy has provided Dog Training In Orange County California for nearly 30 years and has been called "America's Top Dog Trainer" and "King K9".

Falco K9 Academy is one of the few facilities if not the only in the world who trains Police K9 Teams (over 1000), detection dogs (of all disciplines), search and rescue dogs (including Peru and Argentina) and thousands of pet dog owners. And has been featured on the Disney Channel, Animal Planet channel and National Geographic. He was asked to assist Cesar Milan in the filming of his new TV show that will air in 2014. Currently there are two documentaries in production featuring Andy and Falco K9 Academy. Falco K9 Academy has trained and provided dogs for hundreds of Law Enforcement agencies throughout the world. Andy has also been hired by the largest companies in the world including Disneyland, Anaheim; Disneyland, Orlando; Disneyland Hong Kong, The Koch Brothers, Jerry Weintraub; Long Beach Medical Center; George Washington Medical Center in Washington DC and Steven Spielberg's Starlight Star bright Foundation.



As an author Andy's most recent book "Dog Sniff Evidence" is a number one bestseller on Amazon. Andy has written 5 other books including "FALCO - Walking with God and a Dog" which discusses his time as a K9 handler and how his dog brought him closer to God.

Andy is a former police officer and K9 handler for the Anaheim Police Department in California (23 years). Andy was also assigned to the SWAT Team and a Detective in Family Crimes and Sex Crimes (SVU). Andy received a number of awards including Officer of the Year (1993) and the highest award, The Distinguished Service Award (1994).

As a business owner Andy won the "Top Gun, Maverick Award" for excellence in implementation and effectiveness of multicast marketing (2014).

Details

Andy is the President of Falco Enterprises, Inc. a company specializing in the training of humans and their dogs. The company additionally supports these customers with products and services. Andy is also the Training Director of Falco K9 Academy. Andy worked as a Police K9 handler from 1989 to 1996 for the Anaheim Police Department in California. During this period Andy became passionate about Police K9 training and dog training in general. After traveling throughout North America and Europe in seeking dog training and behavior knowledge, Andy

developed Falco K9 Academy in 1995. Andy was then named the Departments first "in-house" training for the K9 Unit. Andy retired from the police department in 2005 to concentrate on Falco Enterprises, Inc.

Andy is also the President of Falco K9 Services, Security and Investigations, a security firm that utilizes dogs in both patrol and detection dog services in addition to other security services.

Director of Falco's Police K9 Academy

Falco K9 Academy trains the handlers and dogs for Anaheim Police Department, Orange Police Department, Tustin Police Department, Palm Springs, Cathedral City, Long Beach Memorial Medical Center, Queen of the Valley Medical Center and Indio Police Departments locally. Nationally and internationally, Andy has selected and/or trained teams for departments in Washington, Oklahoma, Minnesota, Florida, Texas, Ohio, Colorado, Oregon, Arizona, Washington DC, Connecticut, Main, Rhode Island, New York, Alberta, Ontario, Spain, Peru, Northern Ireland, Argentina and Portugal.

Director of Falco's Detection Dog Academy

As a detection dog handler, Andy realized the potential for using dogs to detect anything that has an odor. In addition to the usual Narcotics and Bomb detection disciplines Andy has developed training programs for new and innovative jobs such as Mold, Arson, lost children and more. Most recently Andy has developed a new and innovative detection dog program for locating E. coli and Salmonella contaminated produce. Falco K9 Academy is teamed with the State of California Department of Public Health and UC Davis. This expertise has led to contracts with one of the largest companies in the world, Disney; Rollins, police departments in North America, Argentina, Costa Rica and the Dominican Republic. We have also assisted entrepreneurs in the Mold detection industry and Bed Bug Detection industry from coast to coast.

Director of The Bed Bug Detection Dog Academy

Over the past 5 years Falco K9 Academy has been instrumental in fighting for stronger and more consistent training and certification standards. But until that happens, we have developed a training program for both dogs and handlers that cannot be surpassed by any other vendor. Our system is much like what we have done for Law Enforcement for the past 25 years...that is to insure the effectiveness of the team through a strong training program. This training has been supported and sanctioned by State and federal governments and tested in both State and Federal Courts. Additionally I have been contracted by some of the largest pest control companies as a consultant for Bed Bug Detection Dog training and services...such as Rollins, Orkin, Western and Terminex.

Instructor, International Police K9 Conference

As an instructor for the International Police K9 Conference, Andy has traveled throughout North America 4 to 5 times a year and instructs K9 handlers and

administrators on the dog behavior, training, liabilities and use of police K9s. At each conference there are 40 to 60 students who attend the weeklong conference. Andy is the lead instructor for the "Problem Solving" section of the school. Problem solving is an unstructured class where student's request help on any aspect of dog behavior and police K9 training. In the 5 years of conducting this class Andy has been faced with hundreds questions and "problems" from aggression issues to weakness in searching behaviors. Andy was the architect for the famous and popular group walk that is now used in the conference.

Every Police K9 team must pass a minimum standard to receive certification from California's Police Officer's Standards and Training office. The office has certified very few officials to judge the hundreds of K9 teams within the state. Andy Jimenez has been a state certifier for approximately 6 years (Since POST created the Standard).

Director of Falco's Civilian Dog Training Academy

Andy realized it was more important to educate and train the human about the dog and developed a program to reflect this concept. Once people understood how a dog thinks and how they communicate it was easier for them to understand the basic concepts of training. This type of training is most important when dealing with aggression from a dog. If the human knows why a dog is showing aggression it is more likely they will know how to avoid an injury or correct the behavior before it occurs. Additionally, it was important for Andy and all the Academy's trainers, to have a complete understanding of all forms and means of dog training. Not one form of training works for all humans and dogs. For instance a very passive dog who loves food will be very easy to motivate with treats while another dog who is strong willed and not crazy for food may need to be trained by means of correction based training. With this formula, Falco has become very successful in the dog-training field. Falco currently has individual in-home training and group training throughout Southern California.

Court Recognized Expert

Since 1990 when Andy testified as an expert in a narcotics detection case in Los Angeles Federal Court (Anaheim Police Department criminal case), he has continued to be sought after in cases of all types involving dogs. From detection; to use of force; to slip and fall case and Pit Bull fight rings. He has testified or reviewed cases throughout the United States.

Author

Number one bestseller, "Dog Sniff Evidence"; "Falco- Walking with God and a Dog"; "8-Week Dog Training Manual"; "Decoying for the Modern Patrol Dog Detection Dog Handler's Manual".

Falco TV Production Company

Andy is the producer/director of all the video's found on many of the most popular video sites (YouTube, DailyMotion, etc) that feature the pet, police and detection dog training of Falco K9 Academy and other dog related story's. Combined, these videos are viewed by 100's of thousands of people.



Attorney Jeffery Weiner, National Press Corp Washington DC
CSPAN event for the Supreme Court



Andy Falco Jimenez

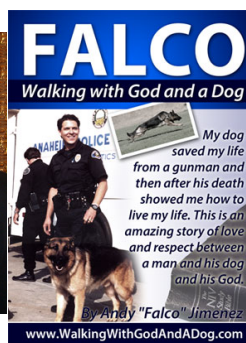
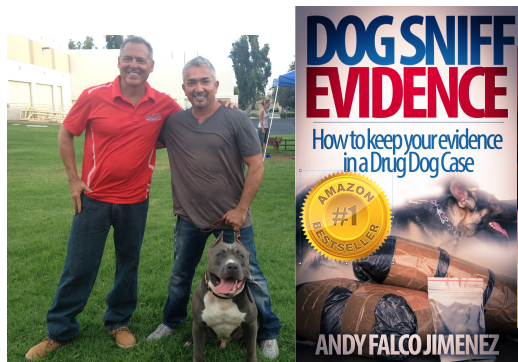
Author-**America's Top Dog Trainer**-Online Marketing Expert -**Motivational Speaker**

As Seen On:



Keynotes and programs Include:

- **Create a Loving and Respectful Relationship with your Dog**
- **Become a Recognized and Well Paid Expert in the Dog Industry**–Email, Social Media, Podcasts, QR Codes, Direct mail, Text Message Marketing and More!
- **Become a Recognized and Well Paid Expert in ANY Industry** –Email, Social Media, Podcasts, QR Codes, Direct mail, Text Message Marketing and More!
- **What you need to Know About Detection Dog Cases**– Based on his Number 1 Bestselling Book “*Dog Sniff Evidence*”
- **How My Police K9 Lead Me to God and Taught Me How to Live My Life** – Based on my book “*Falco–Walking with God and a Dog*”
- **Online Marketing for Attorney’s or any other Niche Expert** - Email, Social Media, Podcasts, QR Codes, Direct mail, Text Message Marketing and More!
- **How to Deliver Your Story to Sell, Get Leads and Build Your Platform as an Expert**



Andy's Bio

Andy is a Number 1 Best Selling Author who has been training Dogs and People for over 30 years. He has been called America's Top Dog Trainer and King K9. He is also a widely sought out Business Marketing Consultant who has won the "Top Gun, Maverick Award" for excellence in implementation and effectiveness of multicast marketing (2014). The SECRET to Andy's success is his power to TEACH people and ENTERTAIN them while doing it.

Falco K9 Academy is one of the few facilities if not the only in the world who trains Police K9 Teams (over 1000), detection dogs (of all disciplines), search and rescue dogs (including Peru and Argentina) and thousands of pet dog owners. And has been featured on the Disney Channel, Animal Planet channel and National Geographic. He was asked to assist Cesar Milan in the filming of his new TV show that will air in 2014. Currently there are two documentaries in production featuring Andy and Falco K9 Academy. Falco K9 Academy has trained and provided dogs for hundreds of Law Enforcement agencies throughout the world. Andy has also been hired by the largest companies in the world including Disneyland, Anaheim; Disneyland, Orlando; Disneyland Hong Kong, The Koch Brothers, Jerry Weintraub; Long Beach Medical Center; George Washington Medical Center in Washington DC and Steven Spielberg's Starlight Star bright Foundation.

As an author Andy's most recent book “Dog Sniff Evidence” is a number one bestseller on Amazon. Andy has written 5 other books including “FALCO – Walking with God and a Dog” which discusses his time as a K9 handler and how his dog brought him closer to God.

Andy is a former police officer and K9 handler for the Anaheim Police Department in California (23 years). Andy was also assigned to the SWAT Team and a Detective in Family Crimes and Sex Crimes (SVU). Andy received a number of awards including Officer of the Year (1993) and the highest award, The Distinguished Service Award (1994).

“Andy was extremely easy to work with AND he truly is an expert in training Human’s. This is on top of being ONE of America’s Top Dog Trainer’s”

Cesar Milan

To book an event or interview with Andy, call Derek or Brodie at 714-990-9010 or email derek@falcok9academy.com